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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,333	03/29/2004	John J. Giobbi	47079-00087USC1	2703
70243	7590	07/13/2009		
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CHICAGO, IL 60606				
EXAMINER				
HALL, ARTHUR O				
ART UNIT		PAPER NUMBER		
3714				
MAIL DATE		DELIVERY MODE		
07/13/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/812,333

Applicant(s)

GIOBBI, JOHN J.

Examiner

ARTHUR O. HALL

Art Unit

3714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 55-60,71-74 and 93-96.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

/Dmitry Suhol/
Supervisory Patent Examiner, Art Unit 3714

/Arthur O Hall/
Examiner, Art Unit 3714

Continuation of 13. Other:

As an initial matter, Examiner withdraws further objection to claims 95 and 96 in lieu of applicant's amendments of the claims that obviate further objection.

Applicant argues that the combination of Wiltshire and Dunn is not proper because applicant states that there is no reasonable expectation of success, a change in the principle operation and impermissible hindsight for reason that Dunn does not teach plural selectable indicia that corresponds to plural games.

At the outset, Examiner submits that applicant merely recites in claim 55 that plural selectable indicia corresponds to or is otherwise related to plural games, not that the indicia is actually selected. Further, Examiner submits that Dunn teaches that promotional advertising or information presentations are displayed during periods of non-play or when game play is inactive for viewing and decision making by the player with respect to information important to the casino for producing revenue, which includes game type, game parameter and game decision choices that give the player a sense of continued interest in and motivation to play a game by providing a more relaxed game play inactive state for the player to make decisions regarding a currently inactive game (column 5, lines 46-67, Dunn). Moreover, Examiner submits that the decision making option of choosing either an advertisement or information content is providing selectable indicia to the player that is related to the plural games to be played since one having ordinary skill in the art would have understood that the type of game to be played and game play parameters are other information or content to be automatically changed during game play inactivity for game player decision making prior to game play re-activation and that is of current and future interest to game players (column 4, line 49 to column 5, line 24, Dunn). In addition, one having ordinary skill in the art would have understood that the selectable casino games of Wiltshire are an equivalent alternative to the other information or content displayed during game play inactivity in Dunn such that the player not only has the opportunity to make decision about which advertisements are important to them when not playing a game, but also have the chance to select the game type and/or game play parameters for future game play (column 6, lines 13-42, Dunn).

Thus, Examiner maintains the grounds of rejection under 35 USC 103 as described in the Final Office Action mailed 3/30/2009.